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## PRESIDENT DEVOTES HIS MESSAGE TO THE TRUSTS

WASHINGTON, Dec. 5.—The message of President Taft to the first regular session of the sixty-second congress was read in both houses yesterday. It is as follows:

To the Senate and House of Representatives:

This message is the first of several which I shall send to congress during the interval between the opening of its regular session and its adjournment for the Christmas holidays. The amount of information to be communicated as to the operations of the government the number of important subjects calling for consideration by the executive, and the transmission to congress of exhaustive reports of special commissions, make it impossible to include in one message of a reasonable length a discussion of the topics that ought to be brought to the attention of the national legislature at its first regular session.

**The Anti-Trust Law—The Supreme Court Decision.**

In May last the supreme court handed down decisions in the suits in equity brought by the United States to enforce the further continuance of the Standard Oil Trust and of the American Tobacco Trust and to secure their dissolution. The decisions are epoch making and serve to advise the business world authoritatively of the scope and operation of the anti-trust act of 1890. The decisions do not depart in any substantial way from the previous decisions of the court in constraining and applying this important statute, but they clarify those decisions by further defining the already admitted exceptions to the literal construction of the act. By the decision they further

clarify and remove to the future the question of its inhibition, certain contractual restraints of trade which it denominated as incidental or indirect.

These cases of restraint of trade that the court excepted from the operation of the statute were instances which, at common law, would have been called reasonable. In the Standard Oil and tobacco cases, therefore, the court merely adopted the tests of the common law, and in defining exceptions to the literal application of the statute, only substituted for the test of being incidental or indirect, that of being reasonable, and this, without varying in the slightest the actual scope and effect of the statute. In other words, all the cases under the statute which have now been decided would if the court had originally accepted have been decided the same way in its construction the rule at common law.

It has been said that the court by introducing into the construction of the statute common-law distinctions, has emasculated it. This is obviously untrue. By its judgment every contract and combination in restraint of interstate trade made with the purpose or necessary effect of controlling prices by stifling competition, or of establishing in whole or in part a monopoly of such trade is condemned by the statute. The most extreme critics cannot instance a case that the statute condemns under the statute which is not brought within its terms as thus constructed.

The suggestion is also made that the supreme court by its decision in the last two cases has committed to the court the undefined and unlimited discretion to determine whether a case of restraint of trade is within the terms of the statute. This is wholly untrue. Reasonable restraint of trade at common law is well understood and is clearly defined. It does not rest in the discretion of the court. It must be limited to accomplish the purpose of a lawful main contract to which, in order that it shall be enforceable at all, it must be incidental. If it exceeds the scope of that contract, it is void.

The test of the common-law rule was never applied by the court at common law to contracts or combinations or conspiracies in restraint of trade whose purposes were or whose necessary effect would be to stifle competition, to control prices, or establish monopolies. The courts never assumed power to say that such contracts or combinations or conspiracies might be lawful if the parties to them gave only moderate in the use of the power thus secured and did not exact from the public too great and exorbitant prices. It is true that many theorists, and others engaged in business violating the statute, have hoped that some such line could be drawn by courts; but no court of authority has ever attempted it. Certainly there is nothing in the decisions of the latest two cases from which such a dangerous theory of judicial discretion in enforcing this statute can be derived.

**Force and Effectiveness of Statute a Matter of Growth.**

We have been twenty-one years making this statute effective for the purposes for which it was enacted. The Knight case was discouraging and the fact that the statute was whole available power to attack and suppress the evils of the trusts. Slowly, however, the error of that judgment was corrected, and only in the last three or four years has the heavy hand of the law been laid upon the great illegal combinations that have exercised such an absolute domination over many of our industries.

Criminals have even been brought and a number are pending, but juries have felt adverse to convicting for jail sentences and judges have been most reluctant to impose such sentences on men of respectable standing in society whose offense has been regarded as merely statutory. Still, as the offense becomes better understood and the committing of it becomes more of studied and deliberate defiance of the law, we can be confident that juries will convict individuals and that jail sentences will be imposed.

**The Remedy in Equity by Dissolution.**

In the Standard Oil case the supreme and circuit courts found the combination to be a monopoly of the interstate business of refining, transporting and marketing petroleum and its products, effected and maintained through thirty-seven different corporations, the stock of which was held by a New Jersey company. It in effect commanded the dissolution of this combination, directed the transfer and pro rata distribution of the New Jersey company of the stock held by it in the thirty-seven corporations to and among its stockholders; and the corporations and individuals who were enjoined from conspiring or combining to restore such monopoly; and all agreements between the subsidiary corporations tending to produce or bring about further violations of the act were enjoined.

In the tobacco case, the court found that the individual defendants, twenty-nine in number, had been engaged in a successful effort to acquire complete dominion over the manufacture, sale, and distribution of tobacco in this country and abroad, and that this had been done by combinations made with a purpose and effect to stifle competition, control prices, and establish a monopoly, not only in the manufacture of tobacco, but also of tin-foil and license used in its manufacture and of its products of cigars, cigarettes and snuffs. The tobacco suit presented a far more complicated and difficult case than the Standard Oil suit for a decree which would effectuate the will of the court and end the violation of the statute. There was here no single holding company as in the case of the Standard Oil Trust. The main company was the American Tobacco company, a manufacturing, selling, and holding company. The plan adopted to destroy the combination and restore competition involved the redivision of the capital and plants of the whole trust between some of the companies constituting the trust and new companies organized for the purpose of the decree

and made parties to it, and number of new and old, fourteen.

**Situation and Readjustment.**

The American Tobacco company (old), readjusted capital, \$92,000,000; the Liggett & Meyers Tobacco company (new), capital, \$67,000,000; the P. Lorillard company (new), capital, \$47,000,000; and the R. J. Reynolds Tobacco company (old), capital, \$7,525,000, are chiefly engaged in the manufacture and sale of chewing and smoking tobacco and cigars. The former one tin-foil company is divided into two, one of \$825,000 capital and the other of \$400,000. The one staff company is divided into three companies, one with a capital of \$15,000,000, another with a capital of \$8,000,000 and a third with a capital of \$8,000,000. The licensee companies are two, one with a capital of \$5,758,300 and another with a capital of \$2,000,000. There is also, the British American Tobacco company, a British corporation, doing business abroad, with a capital of \$25,000,000, the Porto Rican Tobacco company, with a capital of \$1,800,000, and the corporation of United Cigar Stores with a capital of \$9,000,000.

Under this arrangement, each of the different kinds of business will be distributed between two or more companies with a division of the prominent brands in the same tobacco products, so as to make competition on an equal basis possible but necessary. Thus the smoking tobacco business in the country is divided so that the present independent companies have 21.39 per cent, while the American Tobacco company will have 33.08 per cent, the Liggett & Meyers 29.65 per cent, the Lorillard company 22.82 per cent, and the Reynolds company 2.66 per cent. The other thirteen companies, both preferred and common, has been taken from the defendant American Tobacco company and has been distributed among its stockholders. All covenants restricting competition have been declared null and further performance of them has been enjoined. The preferred stock of the different companies has now been given voting power which was denied it under the old organization. The ratio of the common stock to the common was 78 to 40. This constitutes a very decided change in the character of the ownership and control of each company.

In the original suit there were twenty-nine defendants who were charged with being the conspirators through whom the illegal combination was effected and exercised its unlawful domination. The defendants will hold amounts of stock in the various distributee companies ranging from 41 per cent as a maximum to 28 1-2 per cent as a minimum, except in the case of one small company, the Porto Rican Tobacco company, in which they will hold 45 per cent. The twenty-nine individual defendants are enjoined for three years from buying any stock except from each other, and they are thus prevented from extending its control during that period. All parties to the suit, and the new companies who are made parties, are enjoined perpetually from in any way effecting any combination between any of the companies in violation of the statute by way of resumption of the old trust. Each of the fourteen companies is enjoined from acquiring stock in any of the others. All these companies are enjoined from having common directors or officers, or common buying or selling agents, or common offices, or lending money to each other.

**Effectiveness of Decree.**

I venture to say that not in the history of American law has a decree so effective been entered by a court that against the tobacco trust. As Circuit Judge Noyes said in his judgment approving the decree:

"The extent to which it has been necessary to tear apart this combination and force it into new forms with the attendant burdens ought to demonstrate that the federal anti-trust statute is a drastic statute which accomplishes its purpose as long as it stands on the statute books must be obeyed, and which cannot be disobeyed without incurring far-reaching penalties. And, on the other hand, the successful reconstruction of this organization should teach that the effect of enforcing this statute is not to destroy, but to reconstruct; not to demolish, but to rebuild in accordance with the conditions which the congress has declared shall exist among the people of the United States."

**New Remedies Suggested.**

Much is said of the repeal of this statute and of constructive legislation intended to accomplish the purpose and blaze a clear path for honest merchants and business men to follow. It may be that such a plan will be evolved, but it is evident that the discussions which have been brought out in recent days by the fear of the continued execution of the anti-trust law have produced nothing but glittering generalities and have offered no line of distinction or rule of action as definite and as clear as that which the supreme court itself lays down in enforcing the statute.

**Supplemental Legislation Needed—Not Repeal or Amendment.**

I see no objection—and indeed I can see no decided advantage—in the enactment of a law which shall describe and denounce methods of competition which are unfair and are badges of the unlawful purpose denounced in the anti-trust law. The attempt and purpose to suppress a competitor by underselling him at a price so unobtainable as to drive him out of business, or the making of exclusive contracts with customers under which they are required to give up association with other manufacturers and numerous kindred methods for stifling competition and effecting monopoly, should be described with sufficient accuracy in a criminal statute on the one hand to enable the government to shorten its task by prosecuting single misdoers instead of an entire conspiracy, and, on the other hand, to serve the purpose of pointing out more in detail to the business community what must be avoided.

**Federal Incorporation Recommended.**

In a special message to congress on January 7, 1910, I ventured to point out the disturbance to business that would probably attend the dissolution of these offending trusts. I said:

"But such an investigation and possible prosecution of corporations whose prosperity or destruction affects the comfort not only of stockholders but of millions of wage earners, employees, and associated tradesmen must necessarily tend to disturb the confidence of the business community, to dry up the now flowing sources of capital from its places of hoarding, and produce a halt in our present prosperity that will cause suffering and strained circumstances among the innocent many for the fault of the guilty few. The question which I wish in this message to bring clearly to the consideration and discussion of congress is whether in order to avoid such a possible business danger, something cannot be done by which these business combinations may be offered a means of great financial disturbance, of changing the character, organization, and extent of their business into one within the lines of the law under federal control and supervision, securing compliance with the anti-trust statute."

"Generally, in the industrial combinations called 'trusts' the principal business is the sale of goods in many states and in foreign markets; in other cases the interstate and foreign business far exceeds the business done in any one state. This fact will justify the federal government in granting a federal charter to such a combination to make and sell in interstate and foreign commerce the products of useful manufacture under such limitations as will secure a compliance with the anti-trust law. It is possible so to frame a statute that while it offers protection to a federal company against harmful, vexatious, and unnecessary invasion by the states, it shall subject it to reasonable taxation and control by the states with respect to its purely local business."

"I do not set forth in details the terms and sections of a statute which might supply the constructive legislation permitting and aiding the formation of combinations of capital into federal corporations. They should be subject to rigid rules as to their organization and procedure, including effective publicity, and to the closest supervision as to the issue of stocks and bonds by an executive bureau or commission in the department of commerce and labor, to which in times of doubt they might well submit their proposed plans for future business. It must be distinctly understood that incorporation under a federal law could not exempt the company thus formed and its incorporators and managers from prosecution under the anti-trust law for subsequent illegal conduct, but for publicity of its procedure and the opportunity for frequent consultation with the bureau or commission in charge of the incorporation as to the legitimate purpose of its transactions would offer it as great security against successful prosecution for violations of the law as would be practical or wise."

**Only Supplemental Legislation Needed.**

The opportunity thus suggested for federal incorporation, it seems to me, is suitable constructive legislation needed to facilitate the squaring of great industrial enterprises to the rule of action laid down by the anti-trust law. The statute as enacted by the supreme court must continue to be in the line of distinction for legitimate business. It must be enforced, unless we are to banish individualism from all business and reduce it to one common system of regulation or control of prices like that which now prevails with respect to public utilities, and which when applied to all business would be a long step toward state socialism.

**Importance of the Anti-Trust Act.**

The anti-trust act is the expression of the effort of a freedom-loving people to preserve equality of opportunity. It is the result of the confident determination of such a people to maintain their future growth by preserving uncontrolled and unrestricted the enterprise of the individual, his industry, his ingenuity, his intelligence, and his independent courage.

For twenty years or more this statute has been upon the statute book. All knew its general purpose and approved. Many of its violators were cynical over its assumed impotence. It seemed impossible of enforcement. Slowly the mills of the courts ground, and only gradually did the majesty of the court assert itself. Many of its statesmen-authors died before it became a living force, and they and others saw the evil grow which they had hoped to destroy. Now its efficacy is seen; now its power is heavy; now its object is near achievement. Now we hear the call for its repeal on the plea that it interferes with business prosperity, and we are advised in most general terms, how by some other statute and in some other way the evil we are just stamping out can be cured, if we only abandon this work of twenty years and try another experiment for another term of years.

It is said that the act has not done good. Can this be said in the face of the effect of the Northern Securities decree? That decree was in no way so drastic or inhibitive in detail as either the Standard Oil or the Tobacco decree; but did it not stop for all time the then powerful movement toward the control of all the railroads of the country in a single hand? Such a one-man power could not have been a healthful in-

fluence in the republic, even though exercised under the general supervision of an interstate commission.

Do we desire to make such ruthless combinations and monopolies lawful?

When all energies are directed, not toward the reduction of the cost of production for the public benefit by a healthful competition, but toward new ways and means for making permanent in a few hands the absolute control of the conditions and prices prevailing in the whole field of industry, then individual enterprise will be paralyzed and the spirit of commercial freedom will be dead.

WM. H. TAFT.

The White House, December 5, 1911.

## DEMOCRATIC PRESS IS ALL FUSSED UP

Bourbon Papers Are Just Getting In Touch With the Truth Regarding Corporation Control.

The democratic press is much fussed up because of the revelation or rather exploitation of the fact that the Copper Queen company or corporation will not be subject to control by the corporation commission owing to the peculiar phrasing of that clause of the constitution which prescribes what corporations shall fall under the control of the commission. The democratic newspapers hold that the charge cannot be true because if it were true it would have been made public weeks or months ago. The fact is this peculiar weakness of the corporation commission clause was made public months ago by a newspaper in Globe and has been referred to frequently by republican speakers and newspapers since the opening of the present campaign.

Section of Article XV of the constitution provides as follows:

"Sec. 4.—The corporation commission and the several members thereof shall have power to inspect and investigate the property, books, papers, business methods, and affairs of any corporation whose stock shall be offered for sale to the public, and of any public service corporation doing business within the state."

The Copper Queen Company does not offer and has not offered its stock for sale to the public and it is not a public service corporation as defined by Section 2 of Article XV of the constitution, therefore it does not come under the control of the corporation commission.

The singular position of the Copper Queen in the financial world,—that it was a closed corporation with not a dollar's worth of stock on the market was well known to George W. P. Hunt and others who took part in the framing of the constitution and if those men had been paid to frame a constitution which would render the Copper Queen immune they could not have done a better job.

But while the big Copper Queen is immune from surveillance by the corporation commission every local corporation formed by local men to develop a mining prospect or an irrigation project which might aid to the wealth of the state and which must depend upon sales of stock with which to provide the necessary funds must submit to being overhauled by the commission.

In its perturbation caused by the exploitation of the "immunity" clause, granted the Copper Queen by Hunt and his fellow constitution makers Mr. Hunt's newspaper asks:

"Why have they (the republicans) waited a week before election to spring this sensation? If it were true, it would be perfectly legitimate campaign material, and every republican lawyer in Arizona would long since have eagerly asserted it. Will any lawyer of good repute now come forth and back up the assertion of Williams?"

As shown above this matter was exploited long ago and the voter need not wait for the opinion of a lawyer as to the operation of the law as prescribed by the constitution and quoted in exact language above. It is plain as a pike-staff and any voter who can read the constitution can decide for himself and will decide that the great Copper Queen, which has not a share of stock for sale and which is not a public service corporation, is absolutely immune from interference by the corporation commission.

Is it out of gratitude for this favor that the Copper Queen papers are so keenly supporting Mr. Hunt in this whether the remainder of the contract campaign?

And just a word as to what other lawyers besides Williams think of the corporation clause of the constitution.

"They can't make all those provisions relating to the corporations stick," Judge A. C. Baker has declared. Judge Baker is a democrat, a former chief justice of the supreme court, and is regarded as one of the best lawyers in Arizona. He was also a member of the constitutional convention. "This clause providing that the commission may prescribe the form of a corporation's contracts will never get past the supreme court of the United States," he declared, "and there are other provisions regarding whose constitutionality I am extremely doubtful."

In the opinion of Don C. Babbitt, the leading democratic candidate for the legislature, the corporation clause will have to be changed. "Clothed with the powers granted by that clause," said Mr. Babbitt, "a graffer could become rich before the people could get the recall started to work."

**AN ALARM AT NIGHT**

That strikes terror to the entire household is the loud, hoarse and metallic cough of croup. No mistaking it, and fortunate then the lucky parents who keep Foley's Honey and Tar Compound on hand. H. W. Casselman, Canton, N. Y., says: "It is worth its weight in gold. Our little children are troubled with croup and hoarseness, and all we give them is Foley's Honey and Tar Compound. I always have a bottle of it in the house." Elvey and Hulet.

Thursday, December 7th—"The White Line" franchise election.

"The White Line" Election—Next Thursday, December 14th.

Duffy's New York sweet elder at 75c a gallon. Melzer Bros. Co. Main 75; Overland 75L.

Without opiates or harmful drugs of any kind Foley's Honey and Tar Compound stops coughs and cures colds. Do not accept any substitute. Elvey and Hulet.

**LABOR NEWS AND NOTES.**

North Carolina's cotton crop is worth \$40,000,000.

Atlanta is preparing for the greatest corn show in its history this month.

Paris cabmen are, by regulation, forbidden to smoke while driving.

Illinois has authorized the appointment of a woman investigator for employment agencies.

The new School of Technology at Halifax is meeting with success from the very start. A new department for education of fishermen is contemplated and the indications are that it will prove very popular.

England's National Union of Road and Shoe operatives, having adopted a label to be placed upon the product of its members, has instituted an active label campaign.

Reeds Spring, a little town of a few hundred population in Stone county, Mo., is the leading city in the world for the shipping of railroad ties. Heavy oak ties are brought in from the hills by the farmers. They get 35 to 50 cents each for the ties.

The building of a \$2,000,000 municipal lighting plant will be one of the first duties of Mayor Baker of Cleveland. The people approved the issue of bonds by a vote of 57,023 to 22,297.

A two-thirds vote was necessary for the approval of the bonds.

Panama City is constructing a public washhouse. The purpose is to accommodate poor washwomen who do not have suitable places for washing.

Here they will have ample room, be furnished with water and a sheltered place to dry the clothes, all for a nominal charge of 50 cents per week.

With the purpose of restoring "hog killing day" and the old-fashioned smokehouse to the farm and thus save the farmers of Kansas millions of dollars on meat every year, Prof. H. J. Waters, president of the Kansas State Agricultural College, has inaugurated plans for a course in butchering to be offered farmers' sons attending the college.

A card giving shoe sizes and tool list staff and any voter who can read the constitution can decide for himself and will decide that the great Copper Queen, which has not a share of stock for sale and which is not a public service corporation, is absolutely immune from interference by the corporation commission.

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## ELKS' THEATER TWO NIGHTS Dec. 11 and 12

**JOS. M. GAITES Presents**

**CECIL CLEAN and FLORENCE HOLBROOK**

**"BRIGHT EYES"**

WITH A COMPANY OF SEVENTY-FIVE PEOPLE ORIGINAL NEW YORK-CHICAGO AND BOSTON PRODUCTION

**AUGMENTED ORCHESTRA**

By the Authors of "THREE TWINS" and "MADAM SHERRY"

Book by Ches. Dickson. Lyrics by Otto Hauerbach. Music by Karl Hoschna

Prices, 50c, \$1.00, \$1.50, \$2.00, boxes \$2.50. Sale of seats opens Dec. 7th, at Boehmer's Drug Store.

**A NEW**

**Oakland**

**LINE FOR 1912**

**Eight Models**

**\$1175 to \$2250**

THE OAKLAND line for 1912 is complete, comprised of runabouts, roadsters, coupes, and tourers. Special attention has been paid to design and finish; no cars at the price are more beautiful. They are powerful, safe, roomy, comfortable, luxurious, economical and efficient.

"The Realization Of An Ideal."

**HAWLEY, KING & CO.**

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